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IN THE

Supreme Court of the United States

ARDIE R. MILES and ED BROWN, individually and as deacons, trustees and members of Ebenezer Baptist Church, Inc., and EBENEZER BAPTIST CHURCH, Inc.,

Plaintiffs-Respondents,

against

ANDERSON W. WILSON, individually and as Pastor of Ebenezer Baptist Church, Inc.,

Defendant-Appellant.

Petition for a Writ of Certiorari to the United States Supreme Court.

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IN THE

Supreme Court of the United States

ARBIE R. MIL[illegible] and ED BROWN, individually and as deacons, trustees and members of Ebenezer Baptist Church, Inc., and EBENEZER BAPTIST CHURCH, Inc.,

Plaintiffs-Respondents,

against

ANDERSON W. WILSON, individually and as Pastor of Ebenezer Baptist Church, Inc.,

Defendant-Appellant.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT.

Petitioner, Rev. Anderson W. Wilson, individually and described as pastor of the Ebenezer Baptist Church, the spiritual body, prays for a writ of certiorari to review the judgment of the New York Court of Appeals entered in the above captioned case on November 13, 1958, and the remittitur amended on January 15, 1959.

Opinions Below.

The opinion of the New York Court of Appeals is reported at 5 N. Y. 2d 822.

The opinion of the Appellate Division, Second Department, is reported at (fols. 2215 to 2223) 6 App. Div. 2d 898. The opinion of the Supreme Court, Kings County, is found at folios 88 to 123.

Jurisdiction.

The judgment of the New York Court of Appeals was entered on November 13, 1958 (R. Page to 37). A motion for rehearing was denied, and the remittitur was amended on January 15, 1959. The jurisdiction of this Court is invoked under Sections 237 thru 240, U. S. J. C.

Questions Presented.

The questions presented are whether civil courts have power or jurisdiction, without permission of the church, not a party to action, to interfere in matters of spiritual concern, such as removing petitioner, a minister, from his pulpit, excommunicating 14 out of 24 members of a Baptist Church, and disqualifying these 14 members of a Baptist Church from their right to vote on an ecclesiastical question, the removal or retention of the minister of their church; depriving petitioner, a minister, of his pulpit, after the highest judicatory in the church had voted to retain him, and to retain him under his lifetime contract with the spiritual body; depriving the highest judicatory, the Ebenezer Baptist Church, the spiritual body, an unincorporated association, not a party to the action, of their pastor, without its permission or consent; refusing to accept, and then overruling the decision of the highest judicatory, who had voted to retain its pastor, the petitioner; refusing to obey the stipulation of settlement herein wherein it was implicit, that the qualifications of the members of the spiritual body, who were to vote on the two questions to be submitted, were to be determined by church law, not by civil law.

Statutes Involved.

The pertinent provisions of the First Amendment to the United States Constitution, Fourteenth Amendment to the

United States Constitution, Section 3 of the Article I of the New York State Constitution, Section 5, Section 25, Section 139 of the Religious Corporation Laws of the State of New York, Sections 12 and 13 of the General Association Law of the State of New York, are set forth in an appendix, *infra*, pages 31 to 33.

Statement.

The petitioner has been the pastor of the Ebenezer Baptist Church, the spiritual body, not a party to this action, since 1938, when the ecclesiastical body, through its membership called him as its pastor, at a duly called and held church meeting, and the petitioner thereafter accepted the call. After serving for many years, the congregation honored the petitioner, by giving him a lifetime contract of employment (see Plaintiff's Exhibit 9 in evidence, fols. 2107-2109). On August 14th, 1957, at which time the petitioner was in his 19th year of service, as the minister of the said church, two of the deacons, Arbie R. Miles and Ed Brown, decided to take over the control of the church, and without the knowledge, permission or consent of the church, they had a corporate meeting, called for September 10th, 1957, for the purposes of having the "members of the corporation" vote to remove petitioner.

This meeting was illegally called and held, because the petitioner is an officer of the church, the spiritual body, and not an officer of the corporation, and he could only be removed, by the membership of the ecclesiastical body, and not by the membership of the corporate body. The distinction between the members of the ecclesiastical body, and the members of the corporate body, was very ably demonstrated by the Court of Appeals of the State of New York in the case of *Walker Memorial Baptist Church v. Saunders*, 285 N. Y. 462.

Nevertheless, the membership of the corporation then present, on September 10th, 1957, by a vote of 37 to 4, voted that the charges were unsubstantiated, and were rejected, and the motion was tabled to remove the petitioner (see fols. 3170 thru 3178).

In spite of that fact, Arbie R. Miles and Ed Brown started an action in the Supreme Court, Kings County, for a permanent injunction, and this case went to trial before Special Referee Steinbrink, on a complaint, which alleged that the "membership of the corporation" had voted to discharge petitioner as the pastor of the church, on September 10th, 1957, for which they sought a permanent injunction against the petitioner (see fols. 15-17) to restrain him from preaching or being the pastor of the plaintiff corporation.

An answer was interposed by petitioner with four affirmative defenses, and it was alleged that the Court had no jurisdiction, because the Ebenezer Baptist Church, the spiritual body, was neither a plaintiff nor a defendant herein, nor was any demand made upon the Ebenezer Baptist Church, the spiritual body, to bring this action, which was refused, nor was any authority given to the plaintiffs to institute the action (see fol. 27). That as a second affirmative defense, the Court has not and should not take jurisdiction over the cause of action herein, because it was purely an ecclesiastical matter (fol. 28). That the plaintiffs have an adequate remedy at law, and that petitioner had a lifetime contract of employment, which was then in full force and effect, had never been cancelled or rescinded, and that pursuant to its terms, the petitioner was and still is the pastor of the Ebenezer Baptist Church, the spiritual body (fols. 29 and 30), the very same constitutional questions raised later in the Appellate Division, Court of Appeals and now in this court.

The case came to trial and Judge Steinbrink overruled the affirmative defenses (fols. 166-168), and after hearing a short witness, it was apparent that the complaint did not state a cause of action, in the light of the holding of the Court of Appeals of the State of New York, in *Walker Memorial Baptist Church v. Saunders, supra,* which specifically held that the "members of the corporation," had no power to remove a minister, an ecclesiastical officer, and Judge Steinbrink asked the attorneys to enter into a stipulation of settlement (fols. 173-198), instead of dismissing the complaint.

A stipulation of settlement was entered into, in which it was provided that there was to be a new meeting, at which the members of the church, not a party to the action, would be permitted to vote and determine two questions.

1. "Do you desire or rescind life tenure of pastor, Anderson W. Wilson?"

2. "Do you desire that the services of pastor, Anderson W. Wilson be terminated?" (fols. 2122 thru 2124).

That the meeting held under the supervision of the Honest Ballot Association, the petitioner won on both questions by a vote of 55 to 44 (fols. 2116 thru 2124).

Plaintiffs challenged 24 of the 55 members who voted in favor of the petitioner, claiming that they were under age, in spite of the fact that many children voted against the petitioner, without objection (fols. 2116 thru 2124).

At this point, it was the duty of the Trial Court, pursuant to the stipulation of settlement hereinabove referred to, to have the membership of the spiritual body, not a party to the action, decide whether these 24 challenged voters were or were not members of the church, and were or were not entitled to vote on the two questions.

Instead of doing that on the plaintiffs' motion, the Special Term ordered a trial to be held and took testimony for seven days (fols. 199 thru 1975), on these two questions, in violation of the stipulation of settlement (173-198) and in violation of the constitutional rights of the defendant, and of the Ebenezer Baptist Church, the spiritual body, not a party to the action, and excommunicated 14 out of 24.

Practically, all of the 24 challenged voters testified that they were members of the church, that they had never been dismissed or removed as members of the church, and that they had voted in favor of Rev. Wilson, on both questions (see pages 139 thru 141, 440 thru 442, 430 thru 432, 243 thru 249, 171 thru 175, 310 thru 316, 299 thru 309, 216, 217, 134, 226 thru 234, 613, 648, 235 to 243, 446 thru 463, 135, 425, 426, 344 thru 346, 470 and 471, 185 thru 191, 327 thru 329, 268 thru 271, 204 thru 208, 216 thru 267, and 210 to 216.

Not only did these 24 people testify that they were members, and had voted in favor of Rev. Wilson, but the records of the church, offered in evidence, by both the plaintiffs and the defendant, showed that all 24 were church members (see Plaintiffs' Exhibit 8 for identification, fols. 2063, 2064; Plaintiffs' Exhibit 9 in evidence, fols. 2074 to 2106, 2128 to 2130; Defendant's Exhibit L in evidence, fols. 2137 thru 2142; Defendant's Exhibit M for identification, fols. 2146 through 2148; Defendant's Exhibit N for identification, fols. 2152 thru 2154.

On December 19th, 1957, the Special Referee wrote his decision and findings, in which he ruled that 14 of the 24 challenged ballots were not members, because they weren't old enough to understand the questions, and some without giving any reason, took away their ecclesiastical right to vote, and thus excommunicated them, and as a result, the Special Referee changed the vote of the highest

judicatory, from 55 to 44 in favor of petitioner, to 44 against petitioner, to 40 in his favor (see fols. 88 thru 123, and the judgment entered thereon, by the Special Referee, fols. 124 thru 150).

Reasons for the Writ.

By the judgment sought to be appealed from, a civil court has in effect excommunicated 14 out of 24 members of a Baptist Church and prevented them from voting on the retention or dismissal of their pastor in violation of a settlement agreement, and their constitutional rights. A civil court has also removed a Baptist minister from his pulpit in violation of a stipulation of settlement, without the knowledge, permission or consent of the Ebenezer Baptist Church, the spiritual body, an unincorporated association, not a party to the action, and the other signatory to petitioner's lifetime contract.

If this judgment of the Court of Appeals is permitted to stand, the separation between church and state in this country is at an end.

That the constitutional questions raised herein are substantial ones, and the writ of certiorari should be granted (see U. S. Judicial Code, Sections 237 thru 240; *Wabash Railway Co. v. Flanagan*, 192 U. S. 29; *Roe v. Kansas*, 278 U. S. 191; *Burke v. Oregon*, 269 U. S. 811).

The test of substantiality, cannot, of course be marked out with mechanical precision. The test in the words of this Court, is whether the contention raised is:

> "So clearly not debatable and utterly lacking in merit, as to require dismissal for want of substance."

See:

Hamilton v. Regents, 293 U. S. 245.

See:

Wabash Railway Co. v. Flanagan, supra.

"The federal question asserted * * * is manifestly lacking in all color of merits."

Roe v. Kansas, supra.

"The alleged grounds are so lacking in substance, that they may properly be designated as frivolous.

"The question need not necessarily be one meriting reversal to be substantial." (See *Matter of Devega v. N. Y. State Labor Relations Board,* 281 N. Y. 13, 19.)

In that regard, Chief Judge Conway of the Court of Appeals, granted a seven-day stay, pending application of writ of certiorari, to this Court, on February 14th, 1959. and a motion for a stay of the enforcement of payment of cost judgments in the courts below, pending the writ of certiorari, was denied by Mr. Justice Harlan on February 20, 1959.

In granting the motion to amend the remittitur, in this case on January 15, 1959, the Court of Appeals said, that it had considered the petitioner's contention that the judgment violated the First Amendment of the United States Constitution, but that it considered the question insubstantial.

In the *Matter of the New York State Labor Relations Board v. Bethlehem Steel Co.,* 295 N. Y. 601, the question of substantiality had previously been decided by the Court of Appeals and denied, but that the question was nevertheless substantial, was confirmed, when this Court reversed, 330 U. S. 767, 91 L. Ed. 1234, 67 S. Ct. 1026.

LAW ON THE CONSTITUTIONAL QUESTIONS.

POINT I.

By the judgment sought to be appealed from, the civil courts have excommunicated 14 out of 24 members of a Baptist Church and deprived them of voting in favor of retaining their pastor.

This is unconstitutional. No one, but the church, may excommunicate these 14 church members.

In *Watson v. Jones*, 80 U. S. 679, at page 730, this Court said:

> "The structure of our government, has, for preservation of civil liberty, rescued the temporal institutions from religious interference. *On the other hand, it has secured religious liberty from the invasion of the civil authority.*"

The Special Referee who wrote the decision and findings, which is the basis of this appeal (fols. 88 thru 120) in the case of *Rector v. Melish*, 194 Misc. 1006, took note of the above quotes by this Court, and on page 1016, Judge Steinbrink wrote:

> "If ever we depart from this, it would be a sorry day for America, for then the basic principle of the separation of church and state will be at an end."

Strangely enough, the man who wrote those words, wrote the judgment in this case, which has been affirmed by the Appellate Division, with the dissenting opinion (see Exhibit E, *infra*) by the Chief Justice of the Appellate Division, Second Department (fols. 2215 thru 2222), and affirmed by the New York State Court of Appeals, unanimously, and yet the judgment represents a very serious and very real invasion by the civil authority against religious liberty, not only of this church, but every church

in America that is run by the majority of its membership, as the highest ecclesiastical judicatory.

The invasion of the civil authority into religious liberty comes about in this way. Basically, this case involves the legality of the removal of a minister in a Baptist Church, the Ebenezer Baptist Church, Inc., a religious corporation of the State of New York. This petitioner, that minister, had not only the usual call, from the membership of the spiritual body, but in addition to that he had a lifetime contract (fols. 2107-2109) from the Ebenezer Baptist Church, the spiritual body, not a party to this action, an unincorporated association.

Instead of removing the petitioner, pursuant to the laws of the Baptist Church, Judge Steinbrink removed him, pursuant to civil law, to wit, the Corporation Law of the State of New York.

The second basic issue in this case is, may a Civil Court excommunicate 24 member of the Ebenezer Baptist Church, the spiritual body, of their membership in the church, and their right to vote as members on ecclesiastical questions.

Instead of letting the church decide the question of the membership of these 24 people, in accordance with the laws of the church, and their right to vote, in accordance with the law of the church, Judge Steinbrink decided, in effect, to excommunicate them, pursuant to civil law, to wit, the Religious Corporations Law of the State of New York (Sec. 134).

Generally it would appear that Civil Courts will not interfere in the administration of church affairs, and the determination of ecclesiastical questions, where the particular church is governed by a central governing body, such as the Pope in the Catholic Church, or the Presiding Bishop in the Protestant Episcopal Church, but the moment that

Civil Courts come in contact with those churches governed by the majority of their membership, as the highest judicatory in the church, then the Civil Courts lose sight of the Constitution, intervene, and take upon itself, the right to determine church administration, and church ecclesiastical questions.

For example, take Judge Steinbrink, and let us compare his decisions first in a case, with a central governing body, such as *Rector v. Melish*, 194 Misc. 1006, with his decision in this case, where the church is governed by the majority of its members in the spiritual body.

Dr. Melish was the minister of a Protestant Church, which is governed by a Presiding Bishop, and the case involved the legality of his removal.

Judge Steinbrink, in upholding the removal of Dr. Melish, ruled that the removal of a pastor is strictly ecclesiastical, and he cited the following cases and statutes, in support of that proposition:

1. *Connitt v. Reformed Church*, 54 N. Y. 551, 560, 561.
2. *Watson v. Jones*, 80 U. S. 679.
3. *United States Constitution*, First Amendment.
4. *Baxter v. McDonald*, 155 N. Y. 83.
5. *Moyle v. Franz*, 267 App. Div. 423-427.
6. *Newman v. Gibbons*, 253 App. Div. 837.
7. *SS & B Live Poultry v. Kashruth Association*, 158 Misc. 358.

On page 1018, Judge Steinbrink quotes from the dissent of Mr. Justice Carswell in *Moyle v. Franz, supra*, on a different ground, at page 427 as follows:

> "To insure unimpaired the integrity of this principal, courts will not inquire into or concern them-

selves, directly or indirectly, with conflicting contentions, relating to the practice or to the administration of the doctrinal affairs of the religious groups, or the merits of or grounds for the imposition of discipline, for claimed violations of duties, owing to a religious group, by a member thereof."

It seems strange that Mr. Justice Steinbrink didn't think of this quote by Mr. Justice Carswell, when the question of the excommunication of the 24 members arose, and the right to vote of these 24 members came before him. Instead, the Referee, in total disregard of the constitutional rights of the pastor, the church, and these 24 church members, excommunicated them in the following language at folios 1998-1999 and in total disregard of the law laid down by the Court of Appeals in *Walker Memorial Baptist Church v. Saunders*, 285 N. Y. 462, which is demonstrated very forcibly by the Referee's opinion at folios 1998-1999, as aforesaid:

> "The thing that the defendant seems to rely upon with respect to some of these matters is not at all contained in the body of the provision with regard to church membership, but rather as a footnote which Hiscox himself makes to what he has written, namely, Note No. 14, on page 79, where he says that they all have equal rights and immunities, without distinction of sex, age or condition. That may very well be with regard to worship, *but I absolutely decline to hold that that applies to elections or voting such as we have had in this case*, for the very simple reason as I have already pointed out that some of these children were of very low order of intelligence and didn't even know the meaning of the words on the ballots on which they pretended to vote." (Italics ours.)

Judge Steinbrink had settled the case (fols. 172 thru 198) and pursuant to the stipulation of settlement in the election run, under the supervision of the Honest Ballot Association, the petitioner had won by a vote of 55 to 44.

When the respondents lost, and they raised conflicting contentions with regard to 24 of the 55 ballots, the law is clear that it was for the spiritual body to determine the conflict.

If Civil Courts, under the First Amendment of the Constitution, have no right to interfere in the ecclesiastical affairs of the church, does the fact that a settlement was made between the petitioner, a minister, and the plaintiffs as church officer, and the church corporation, give a Civil Court greater powers to interfere in church administration, than it had before the settlement was entered into.

It is quite clear that the settlement agreement could not, and did not, give the Trial Court the right to violate either the First or Fourteenth Amendment of the United States Constitution. The Referee undoubtedly realized this ruling was unconstitutional for he admitted that there was no superior body to ecclesiastical body in his opinion at page 668 (fol. 1997):

> "With reference to the body of some of the things stated by Hiscox, it may well be that what he stated were his opinions which should govern these Baptist churches, each one of which is autonomous. They are on congregational lines, the same as the Protestant Episcopal Church and the same as Synagogues of the Jewish Faith. There is nothing above them to control or guide them, excepting the Almighty God."

In *Rector v. Melish*, 3 N. Y. 2d 476, the Court of Appeals indicated that the election and dismissal of a minister was an ecclesiastical matter, that the law of the church, rather than civil statute law, must under our Federal Constitution, First Amendment, be controlling, and the Court of Appeals cited the cases of *Watson v. Jones*, 13 Wall. U. S. 679; *Fiske v. Beatty*, 206 App. Div. 349, 238 N. Y. 598; *Kedroff v. St. Nicholas Cathedral*, 302 N. Y. 133; re-

versed 344 U. S. 94; 344 U. S. 143; *People ex rel. Peck v. Connolly*, 42 Hun 91.

Yet in this case, involving the very same proposition, but only in a different type of church organization, no central governing body, the highest judicatory being the majority of the members of the spritual body, the Trial Court, Appellate Division, and the Court of Appeals in effect invaded the ecclesiastical authority, and deprived the petitioner of his religious liberty, to wit, the right to practice his profession, under the original call and his lifetime contract of employment, all without the consent of the Ebenezer Baptist Church, the spiritual body, not a party to the action, and the other only signatory to the lifetime contract of employment with the petitioner (fols. 2107-2109) and all in violation of settlement agreement, as aforesaid (fols. 173-198).

In *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 143, in reversing the Court of Appeals, Mr. Justice Reed points out on page 151, that *Watson v. Jones*, 80 U. S. 679, has been considered in subsequent national and state litigation, in the following cases, and is still the law of the land:

1. *Sheppard v. Barclay*, 247 U. S. 1.
2. *Barclay v. Hayes*, 208 Fed. 319, 326.
3. *McGinnis v. Watson*, 41 Penn. 9.
4. *State of Missouri ex rel. Watson v. Farris*, 45 Miss. 183, 197, 198.
5. *First Lutheran Church v. Angelical Church*, 135 Fed. 701.
6. *German Reformed Church v. Commonwealth ex rel. Serbert*, 3 Penn. 382.
7. *Gibson v. Armstrong*, 7 B. Mon. Ky. 481.

In the *Kedroff* case, Mr. Justice Reed refers to the case of *Gonzales v. Roman Catholic Archbishop of Manila*, 280 U. S. 1:

> "Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of the Chaplain are, and whether the candidate possess them. In the absence of fraud, perusion or arbitrariness, the decision of a proper church tribunal, on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation, before the secular courts as conclusive, because the parties in interest made them so, by contract or otherwise. In the like circumstances, effect is given in the court to determinations of the judicatory bodies established by clubs and social associations."

When the respondents challenged the qualifications of the 24 of the 55 people who voted for petitioner, as appears by the above quote, it was the function of the church authorities, to wit, the membership of the spiritual body to determine whether these 24 people were members, and whether they had the right to vote.

If those questions had been sent back to them, and they had made a decision, then, in the absence of fraud, collusion or arbitrariness, the decision of the proper church tribunal, on matters purely ecclesiastical, although affecting civil rights are accepted in litigation, before the secular Court, as conclusive, because the parties in interest made them so, by contract.

This case never got that far, because instead of submitting that question of the spiritual body, Judge Steinbrink conducted a seven-day trial, and he made the determination, and he substituted his judgment, particularly with regard to the children, church members, for the only judgment that really counted in this case, to wit, the highest judicatory in this church, the majority of the members of the spiritual body.

There clearly, then, is the invasion by the civil authorities of the ecclesiastical and religious liberty of this petitioner, and the Ebenezer Baptist Church, the spiritual body, not a party to this action, and the 24 challenged members, who the civil court excommunicated from their church, by this judgment.

In *Rector v. Melish*, 3 N. Y. 2d 476, at page 483, Judge Desmond refers to Section 25 of the Religious Corporations Law, indicating it was applicable to all religious groups, and which states:

> "No provision of this Act authorizes the calling, settlement, dismissal or removal of a minister—and a meeting of a church corporation for any such purpose shall be called, held, moderated, conducted, governed and notice of such meeting given and person to reside thereat ascertained *and the qualification of voters thereat determined*, not as required by any provision of this act, but only according to the aforesaid laws and regulations, practice, discipline, rules and usages of the religious denomination or ecclesiastical governing body, if any, with which the church corporation is connected." (Italics ours.)

Therefore, it is quite clear that the judgment in question, not only excommunicated from their church these 24 challenged church members, in violation of the First Amendment of the United States Constitution, and Section 1, Article 3 of the New York State Constitution, but is also in violation of Section 25 of the Religious Corporations Law of the State of New York, indicates the legislative intent precisely as this Court indicated the law to be in the above quote in *Gonzales v. Roman Catholic Archbishop of Manila, supra*, to wit, that a minister is an ecclesiastical officer and could not be removed by a civil court, a church corporation, but only the spiritual body.

There is another substantial constitutional question that arises out of the foregoing fact and that is that the Ebenezer Baptist Church, the spiritual body, not a party to this action, is being deprived under this judgment of its pastor, pursuant to the original call and pursuant to the lifetime contract without due process of law and without its permission, knowledge or consent.

Under Sections 12 and 13 of the General Associations Law of the State of New York, the Ebenezer Baptist Church, the spiritual body, being an unincorporated association, was entitled to be either a plaintiff or a defendant in this case, and the failure to make it either a plaintiff or a defendant amounts to a deprivation of its property without due process of law in violation of the Fourteenth Amendment of the United States Constitution.

In *Walker Memorial Baptist Church v. Saunders*, 285 N. Y. 462, 471, 472, page 470:

> "It was further testified that under the customs, practices and usages of the Baptist Faith, there is a clear cut distinction between the spiritual body and the incorporated church. The spiritual body is of ancient origin, recognizing and following the laws and precepts of the New Testament. The spiritual body has two classes of officers, the pastor and the deacons. The pastor is the chief spiritual officer, having direct charge of the spiritual matters of preaching and teaching and the general spiritual oversight of the members of the congregation. The deacons are elected by the spiritual body, and assist the pastor in the discharge of his duties.
>
> "It was further testified that should the church wish to discharge the minister, the matter must originate in the board of deacons and that 'a church meeting' the only body that can handle such matters, would have to pass upon such discharge. It is not the practice in any church for a corporate meeting to pass upon such charges."

On page 472:

> "It is undisputed that the Baptist Church has rules and regulations for the appointment of ministers, and since a minister is one who has authority to 'preside over and direct the spiritual affairs of the church,' there cannot be any sound basis for the conclusion that the minister of a Baptist church is an officer of the legal entity, which is given control only of the temporalities of the church, which conclusion would be exactly contrary to the rules and regulations by which the church considers itself governed. It follows that the minister of a Baptist church, under the rules and regulations of that denomination, is an officer of the religious society of the church and is not an officer of the religious corporation. This distinction between the church as a religious society and the church as a religious corporation has long been recognized and clearly formulated by the previous decisions. (*Petty v. Tooker*, 21 N. Y. 276; *People ex rel. Dilcher v. German United Evangelical St. Stephen's Church*, 53 N. Y. 103; *Landers v. Frank Street Methodist Episcopal Church*, 114 N. Y. 626; *Bristor v. Burr*, 120 N. Y. 427; *Westminster Presbyterian Church v. Trustees of Presbytery of New York*, 211 N. Y. 214; *Fiske v. Beatty*, 206 App. Div. 349; aff'd 238 N. Y. 598.) It follows, therefore, that the plaintiff corporation had no power to discharge the defendant, the Rev. Mr. Saunders, from his position as minister of the Walker Memorial Baptist Church."

Not only does the caption of this action indicate that petitioner was sued individually and as pastor of the Ebenezer Baptist Church, Inc., of which he was not the pastor, but the complaint alleges in paragraphs Fifth and Sixth thereof that he was removed by the membership of the corporation on September 10, 1957 (fols. 15 thru 17), which clearly was in violation of the law laid down by the Court of Appeals as above quoted.

Therefore, the only thing left in the case, was the stipulation of settlement above referred to, and it has been amply demonstrated that the Trial Court invaded the ecclesiastical administration, and deprived the highest judicatory of this church, of its constitutional right to determine the controversy with regard to the 24 challenged voters, and the Civil Court having usurped that right, it is clear that there has been a very serious constitutional deprivation of the petitioner's rights under the First Amendment of the United States Constitution.

With regard to the second basic question of the excommunication of these 24 members by the Trial Court, and their deprivation of the right to vote so as to change the results of the balloting conducted by the Honest Ballot Association from 55 to 44 in favor of the petitioner to 44 to 40 against the petitioner, that question has been settled a long time ago, and it has been definitely established that the question of church membership is purely ecclesiastical, and solely within the jurisdiction of the ecclesiastical authorities of the church, and no civil right is involved in a claim to be regarded as communicant of a particular church. (See *McGuire v. The Trustees*, 54 Hun 207, 7 N. Y. S. 45; *Waller v. Howell*, 20 Misc. 236; *Holcombe v. Leavitt*, 124 N. Y. S. 980.)

In *Waller v. Howell, supra*, the Court stated the law at page 238 to be as follows:

> "The question whether a right of membership and communion in the church is a civil right has been directly adjudicated. In *McGuire v. St. Patrick's Cathedral*, 54 Hun 207, it was held that the question as to whether an individual was in communion with the church was one over which the church itself had exclusive jurisdiction. Mr. Justice Barrett said: 'In my judgment, McGuire contracted for the exclusive jurisdiction of the church with regard to the question of communion. *Spiritual questions are*

solely for the determination of the church authorities. Over their action in the domain of church discipline or excision the civil courts exercise no advisory power. To attempt to exercise jurisdiction in such matters upon the plea of want of jurisdiction in the church authorities of first instance, would be the entering wedge whereby the symmetry of our governmental system with regard to church and state might readily be destroyed.' Mr. Justice Van Brunt said: 'Under our form of government we do not think that courts can be called upon to compel churches to administer religious rites to persons claiming to be its members, or perform any act in any way impressed with that character.' In that case the right of burial in a lot purchased by the deceased was refused, and no civil right was considered to be involved in the question of communion upon which the right of burial depended." (Italics ours.)

In *Shannon v. Frost*, 3 B. Monroe 253, the Court in discussing this subject said:

"This court, having no ecclesiastical jurisdiction, cannot revise or question ordinary acts of church discipline. Our only judicial power when the case arises from the conflicting claims of the parties to the church, the conflicting claims of the property, and the use of it. *We cannot decide who ought to be members of the church, nor whether the ex-communicated have been justly or unjustly, regularly or irregularly, cut off from the body of the church. We must take the fact of expulsion, as conclusive proof that the persons expelled, are not now members of the repudiating church; for, whether right or wrong, the act of excommunication must, as to the fact of membership, be law to this court. The judicial eye of the civil authority of this land having religious liberty, cannot penetrate the veil of the church, nor can the arm of this Court either rend or touch that veil for the forbidden purpose of vindicating the alleged wrongs of the excinded members.* When they became members, they did so

on the condition of continuing as themselves and their church might determine. In that respect they voluntarily submitted themselves to the ecclesiastical power, and cannot invoke the supervision or control of that jurisdiction by this or any other civil tribunal." (Italics ours.)

In *Dwenger v. Geary*, 113 Indiana 106, the Court said:

"No power, save that of the church, can rightfully declare who is a Catholic. The question is purely one of church government and discipline, and must be determined by the proper ecclesiastical authorities."

To the same effect see:

Diffendorf v. Reformed Calvanist Church, 20 Johns. 12;
Robertson v. Bullins, 11 N. Y. 243;
People v. The Church, 53 N. Y. 103;
Connitt v. Reformed Protestant Church, 54 N. Y. 551;
Richardson v. The Society, 58 N. Y. 187;
Chase v. Cheney, 58 Ill. 509;
German Reformed Church v. Siebert, 3 Pen. St. 282;
Fitzgerald v. Robinson, 112 Mass. 371.

The vote of 54 in favor of the petitioner and 44 against was the vote of the highest ecclesiastical body, the highest judicatory in the Ebenezer Baptist Church. The highest judicatory, in effect, certified their right to vote, and certified their membership by accepting and receiving the ballots of the 54 members and the 44 members (fols. 2116 thru 2124).

Whenever questions of discipline, or of faith, or of ecclesiastical rule, custom or law have been decided by the highest church judicatories, to which the matter has been carried, legal tribunals must accept such decisions as final, in their application to the cases before them. All questions of faith, doctrine and discipline, belong exclusively to the church and its spiritual officers, and the Court will

neither review their determination, on the facts, nor their decision on the question of jurisdiction. It is the settled law of this country, repeatedly announced by the most learned Judges and highest Courts, that in such cases, the civil courts must take the decision of the ecclesiastical courts, as final and binding upon the parties. (See *Watson v. Jones*, 80 U. S. 679; *Connitt v. Reformed Church, supra; Baxter v. McDonald, supra; Waller v. Howell, supra; Walker v. Wainwright*, 16 Barb. 486; *Rector v. Huntington*, 82 Hun 125.)

Not only could the Trial Court not excommunicate the 25 members challenged by the respondents, but not even could the Ebenezer Baptist Church, Inc., one of the respondents, have that right or power. Only the Ebenezer Baptist Church, the spiritual body, an unincorporated association, not a party to this action, had that power, and it has never removed petitioner as its pastor, or abrogated the lifetime contract of employment it gave him, and therefore the written judgment is unconstitutional and beyond the jurisdiction and power of the Court.

The Court of Appeals said in *Walker Memorial Baptist Church v. Saunders, supra*, at pages 472 and 473:

> "The question still remains whether the corporation could expel the other defendants from membership in the corporation. • • • Therefore, since all these defendants are members of the spiritual body of the church, it follows that the church corporation had no right to expel them from voting rights in the religious corporation."

Other states hold this to be the law also.

In *Golden v. Brooks*, 276 S. W. 2d 670, the Court of Appeals of Kentucky held (March 18, 1955) that all members of a Baptist church, regardless of age are entitled to vote at church society meetings, citing:

Randolph v. Mt. Zion Baptist Church, 53 Atlantic Report, 2d Series, 206, 19 Equity Report 605; and *Geter v. Walters*, 68 Atlantic Report 2d series, page 330; 5 New Jersey Superior 10.

In *Randolph v. Mt. Zion Baptist Church, supra*, at page 209 (May 1, 1947), it was held:

> "It is my conclusion that Mt. Zion has no rule or definite custom on the subject that until it shall adopt one the usual Baptist practice governs and all members can vote whether or not they are under age. * * *."

In *Geter v. Walters, supra*, the same rule was followed the Court further holding that since no attempt to enforce the rule concerning eligibility to vote had been made in the past in the New Hope Baptist Church, the rule which was invoked to preclude from voting those who failed to qualify under the unenforced rule, that such rule would not be put into effect for the first time in the contested vote, which was the subject of the controversy in court.

The Trial Court in excommunicating the challenged church members, particularly the children apparently relied on Section 134 of the Religious Corporations Law, but as the Court of Appeals pointed out in *Walker Memorial Baptist Church v. Saunders, supra*, at page 473:

> "Section 134 of Article 7 provides that 'At a corporate meeting of an incorporated Baptist Church, qualified votors shall be all persons of full age, who are then members of such church in good and regular standing by admission of the full communion of membership therewith, or others who have statedly worshiped with such church and have regularly contributed to the financial support thereof during the year next preceding such meeting.'"

But Baptist church law has indicated from time immemorial that once a child is extended the right hand of

fellowship, and becomes a member of the church, he or she *has the right to vote at all church meetings on all ecclesiastical matters.*

The Referee undoubtedly realized that he was using civil law to excommunicate 24 church members, and to oust a pastor because some of the 24 members were children, and while he professes not to rely on Article 7 of the Religious Corporation Law, he in fact relies upon it, in his opinion (fol. 2001):

> "Nothing that I say here is in contravention of other decisions with respect to the provisions of Article 7 of the Religious Corporations Law, because that refers only to property rights, temporal matters. But even there you have at least a hint from the Legislature of what they thought regarding the property matters, for it is provided that only those shall be entitled to vote who have attained their majority."

In that regard the bill of particulars that the plaintiff served in this case admits that this church was governed by Hiscox, "The New Directory for Baptist Churches" (fol. 56).

Page 79, note 14, of Hiscox, "New Directory for Baptist Churches"

> **"Note 14—Persons received for membership have equal right and immunities with any and all other members, without distinction of sex, age or condition, unless for cause under discipline and censure • • •"**

These 24 members testified at the trial that they were all members of the Ebenezer Baptist Church and had never been dismissed from membership (fols. 401, 402, 413, 414, 416, 421, 427, 512, 513, 541, 542, 556, 586, 616, 621, 631, 632, 648, 655, 657, 656, 678, 704, 705, 730, 731, 787 through 801, 805, 808, 983, 984, 1018, 1019, 1030, 1031,

1110 through 1119, 1275 through 1277, 1289 through 1291, 1319 through 1320, 1339 through 1340, 1410, 1411, 1581 through 1587, 1627 through 1629, 1646, 1647, 1943, 1944).

On page 80 of Hiscox, The New Directory for Baptist Churches,

> "There are three ways, according to the order, by either of which the relation of members to the body may be dissolved:
>
> "1. By letter. A member may, on application receive a letter of commendation and dismission from his church, with which to unite with another of the same faith, and thus, not pass out of church relations, but be transferred from one fellowship to another.
>
> "2. By exclusion. When the church, in the exercise of its local authority and discipline, withdraws fellowship from one proven to be an unworthy member, its connection with the body is dissolved and ceases.
>
> "3. By death. The death of members of course dissolves the relation, and transfers them from the church on earth to that above.
>
> "No other modes of dismission or disconnection are recognized among our churches."

On page 81 of Hiscox:

> "Note 7. No member can withdraw from the church. He must be regularly dismissed by the action of the body. Nor can one have his name dropped, or be excluded at his own request. Such action, if taken at all, must be taken by due process of discipline on the part of the church."

There was no testimony offered by the plaintiffs on this trial that any of these 24 challenged members have ever been dismissed from their membership by the affirmative action of the membership of the spiritual body, the highest judicatory, at any time.

To offset the Baptist Church Law, the respondents referred to by-laws, but in the light of their attorneys' admission at folio 161 that

"Mr. Ferziger: There are no by-laws"

in response to the Referee's question, by-laws never produced on the trial should be entirely disregarded.

Not only did these 24 members testify that they were members, but the books of the church showed that they were members. (See fols. 2062-2064, fols. 2074 through 2106, fols. 2137-2142, 2146 through 2148, 2152 through 2154.)

Hiscox, The New Baptist Church Directory, was approved as an authoritative Baptist Church guide by the Court of Appeals in *Walker Memorial Baptist Church v. Saunders, supra*, and the above quotes from Hiscox as to the methods membership in a Baptist church could be terminated, was adopted by the Court of Appeals at page 473:

> "That membership in a Baptist church may be terminated in three ways only, (1) by transfer, namely, by delivery of letter to another Baptist church, (2) by expulsion, when the offending member has violated this one of the church and the ecclesiastical body regards him as not fit for membership therein and (3) by death. Since termination of membership in a religious society by means of the first two of these methods must be by the religious body upon the recommendation of the Board of Deacons, the church corporation has no power to expel a church member from an ecclesiastical membership."

It is obvious that the Referee was not sure that his judgment would stand the test of constitutionality, because at folio 2000 he says:

> "I am regretful that this matter ever came before me"

and at folio 2004:

> "The Referee: Wilson is out from this time on. Wilson the judgment is submitted to me, I will stay voluntarily, though it hasn't been asked of me, my own judgment for thirty days in which the defendant may perfect an appeal, if he is so advised. Within the 30 day period, the provisions of the stipulation are still to be observed."

Also see folios 140 thru 143.

The Appellate Division, Second Department, possibly with the same thoughts in mind about constitutionality, granted the petitioner two stays, one on February 25, 1958, and one on April 25, 1958, all over vigorous opposition.

Likewise the Court of Appeals thru Judge Burke on September 2, 1958, prior to argument of the appeal in that court, granted a stay over vigorous opposition, and required the plaintiffs, among other things, not only to maintain the *status quo*, but also to restore the signs on the church building, which stated: "Ebenezer Baptist Church—Rev. A. Wilson, Pastor."

The Chief Judge of the Court of Appeals, after that Court had unanimously affirmed, without opinion, on November 13, 1958, judgment appealed from, granted a stay after oral argument, and hearing in connection with defendant's claim of unconstitutionality on the motion to amend the remittitur.

On January 15, 1959, the Court of Appeals, as aforesaid, amended the remittitur to show that it considered the First Amendment to the United States Constitution, although it held it to be unsubstantial.

On February 14, 1959, over vigorous opposition, and after hearing, Chief Judge Conway again, allowed a seven-day stay to make an application to this Court for a stay pending writ of certiorari, which was done and denied, as aforesaid by Judge Harlan on February 20, 1959.

CONCLUSION.

The writers urge upon this Court, very seriously the irresistible conclusion that unless this Court intends, by not disturbing the judgment below to end the doctrine of the separation of church and state in this country, and unless civil courts are prepared in the light of the judgment sought, to be appealed from, to take over the operation of all churches and synagogues administered by the majority of the membership of the congregation, throughout this country, that this Honorable Court hear the prayers of every Baptist and every Jew in this country and grant this writ of certiorari.

That this is no exaggerated appeal, let me remind the Court that since the Court of Appeals affirmed, and based thereon, Mr. Justice Morrissey in the Supreme Court, Kings County, granted a motion to punish ten church members, not even parties to the church, and not even served with process in the action solely because these 10 church members called a church meeting, pursuant to the law of the church.

The Chief Justice of the Appellate Division, Second Department, wrote a dissenting opinion, in which he raised with approval the very same constitutional questions as herein raised, and not only voted to reverse, but to dismiss the complaint (fols. 2215-2223). His opinion is incorporated herein verbatim (see Exhibit E).

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

SNITOW & SNITOW,
Attorneys for the Petitioner.

SYDNEY SNITOW, Esq.,
and
MELVEL W. SNITOW, Esq.,
Of Counsel.

APPENDIX.

First Amendment, United States Constitution, U. S. C. A. Constitution, page 46:

> "Congress shall make no law respecting an establishing of religion or prohibiting the free exercise thereof * * *"

Article I, Section 3 of the New York State Constitution, provides as follows:

> "Section (3) (Freedom of Worship; religious liberty).
>
> "Free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; * * *."

Section 25 of the Religious Corporations Law is entitled Pastoral Relation:

> "Section 25. Pastoral Relation.
>
> "No provision in this chapter authorizes a calling, settlement, dismissal or removal of a minister, or the fixing or changing of salary, a meeting of the church corporation for any such purpose shall be called, held, moderated, conducted, governed and notice of such meeting be given and person to reside thereat ascertained and the qualification of voters thereat determined, not as required by any provision of this chapter, but only according to the aforesaid laws and regulations, practice, discipline, rules and usages of the religious denomination or ecclesiastical governing body, if any, with which the church corporation is connected."

Section 5 of the Religious Corporations Law provides as follows:

"Section 5. General powers and duties of trustees of religious corporations.

"The trustee of every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with the provisions of law relating thereto, * * *"

Section 139 of the Religious Corporations Law is as follows:

"Section 139. Control of trustees by corporate meetings of such churches; salary of minister. The Trustees of an incorporated Baptist church shall have no power to settle or remove a minister or to fix his salary or, without the consent of a corporate meeting, to incur debts beyond what is necessary for the administration of the temporal affairs of the church and for the care of the property of the corporation; or to fix or change the time, nature or order of the public or social worship of such church. * * *"

Section 12 of the General Associations Law of the State of New York is as follows:

"Section 12. Action or proceeding by unincorporated association.

"An action or special proceeding may be maintained, by the president or treasurer of an unincorporated association to recover any property, or upon any cause of action or upon which all the associates may maintain such an action for a special proceeding, by reason of their interest or own-

ership therein, either jointly or in common. An action may likewise be maintained by such president or treasurer to recover from one or more members of such association his or their proportionate share of any moneys lawfully expended by such association for the benefit of such associates, or to enforce any lawful claim of such association against such member or members."

"Section 13. Action or proceeding against unincorporated association. An action or special proceeding may be maintained, against the president or treasurer of such association, to recover any property, upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership, or claim of ownership therein, either jointly or in common, or their liability therefore, either jointly or severally. Any partnership or other company or persons, which has a president or treasurer is deemed an association within the meaning of this section."

Exhibit A.

WESTERN UNION TELEGRAM

(52)

1958 Nov 13 PM 3 54

NA257 16 COLLECT=ALBANY NY 13 248PME=

SNITOW AND SNITOW=
152 WEST 42 ST=

MILES V WILSON JUDGMENT AFFIRMED WITH COSTS NO OPINION ALL CONCUR=

RAYMOND J CANNON
CLERK COURT OF APPEALS ALBANY NY=

Exhibit B.

STATE OF NEW YORK,

IN COURT OF APPEALS.

At a Court of Appeals for the State of New York held at Court of Appeals Hall in the City of Albany on the fifteenth day of January A. D. 1959.

Present:

Hon. Albert Conway, Chief Judge, presiding.

Mo. No. 69

ABBIE R. MILES & *ano., individually and* as deacons, trustees and members of the Ebenezer Baptist Church, Inc.,
Respondents,

vs.

ANDERSON W. WILSON, as Pastor of the Ebenezer Baptist Church, Inc.,
Appellant.

A motion to amend the remittitur in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted. Return of remittitur requested and, when returned, it will be amended by adding thereto the following:

Upon the appeal herein there was presented an alleged constitutional question under the Constitution of the United States, viz: Appellant contended that the interference by the civil courts with the internal affairs of a religious body was a violation of the First Amendment. The Court of Appeals held that there was no such violation and that this question was insubstantial in view of the fact that appellant, by stipulation, had submitted to a membership vote the question of his retention in office as pastor.

AND the Supreme Court, Kings County, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

GEARON KIMBALL
Deputy Clerk

(Seal)

Exhibit C.

STATE OF NEW YORK,

IN COURT OF APPEALS.

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the fifteenth day of January A. D. 1959.

Present:

Hon. Albert Conway, Chief Judge, presiding.

Mo. No. 55

ARBIE R. MILES & ano., individually and as deacons, trustees and members of the Ebenezer Baptist Church, Inc.,
Respondents,

vs.

ANDERSON W. WILSON, as Pastor of the Ebenezer Baptist Church, Inc.,
Appellant.

A motion for a re-argument of the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

A copy

GEARON KIMBALL
Deputy Clerk

(Seal)

Exhibit D.

SUPREME COURT OF THE UNITED STATES.

Before:

Honorable Albert Conway, Chief Judge, Court of Appeals, State of New York.

ARBIE B. MILES, *et al.*, individually and as deacons, trustees and members of Ebenezer Baptist Church, Inc.,
Respondents,
against
ANDERSON W. WILSON, individually and as pastor of the Ebenezer Baptist Church, Inc.,
Appellant.

Index No. 10898-1957.

An appeal having been taken to the Court of Appeals of the State of New York from a judgment of the Appellate Division, Second Department, entered August 28, 1958, affirming a judgment of the Supreme Court in favor of the plaintiffs, entered in Kings County, and upon such appeal said judgment having been affirmed by the Court of Appeals on November 13, 1958, counsel for defendant having applied for a stay of the proceedings herein, and a hearing having been had upon such application on February 13, 1959, and having heard argument at said hearing by Melvel W. Snitow, counsel for defendant, and Solomon Z. Ferziger, counsel for plaintiffs, and in order that defendant may have adequate opportunity to present an application for a stay of further proceedings herein for the enforcement of the judgment of affirmance, to a Justice of the Supreme Court of the United States,

IT IS HEREBY ORDERED that the judgment heretofore entered herein upon the order and remittitur of the Court of Appeals be, and it is hereby in all respects, stayed for seven (7) days from the date hereof;

AND IT IS FURTHER ORDERED that the stay granted hereby shall become inoperative and of no effect in any event immediately upon the expiration of seven (7) days from the date hereof, or upon the granting or denial of an application for a stay to a Justice of the Supreme Court of the United States;

AND IT IS FURTHER ORDERED that the original of this order be filed in the Office of the Clerk of Kings County, and that a certified copy hereof be served upon Solomon Z. Fersiger counsel for the plaintiffs, and upon Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

The application is, in all other respects, denied.

Dated at Brooklyn 1, New York, February 14, 1959.

(s) ALBERT CONWAY
Chief Judge of the Court of Appeals of
the State of New York

EXHIBIT E.

Opinion by the Appellate Division, Second Department.

By Nolan, P.J.; Wenzel, Beldock, Ughetta and Hallinan, JJ.:

Miles and ano., &c., res, v. Wilson, ap.—Appeal from a judgment entered after trial before a special referee enjoining appellant from continuing as pastor of the Ebenezer Baptist Church and from interfering in any way with its property, funds or worship and directing him to deliver up to the respondents the church books, papers and property in his possession.

Judgment affirmed, with costs. No opinion.

Wenzel, Beldock, Ughetta and Hallinan, JJ., concur.

Nolan, P. J., dissents and votes to reverse the judgment and to dismiss the complaint, with the following memorandum: Pursuant to the stipulation of the parties, the questions in dispute between appellant and respondents were to be settled at a meeting of the congregation. It was implicit in that stipulation that the qualifications of the members of the congregation who were to vote on the questions to be submitted were to be determined according to the church law recognized by, and the policies, customs, usages, rules and regulations of, the Ebenezer Baptist Church. No power to determine such questions, except in accordance with the law of the church, was reserved to the referee. It was established by the testimony of witnesses that according to ecclesiastical law, as recognized in the Ebenezer Church, and according to such rules and regulations, all members of the congregation were permitted to vote, without distinction because of sex, age or other condition. It was for the congregation to determine whether persons desiring to become members had sufficient capacity to understand matters of doctrine and other questions which might come before the congregation for determina-

tion. Once such persons were accepted as members, and even though they might appear to others, outside of the congregation, to lack qualification, they had equal rights with all other members. This appears to have been recognized by the parties with respect to those who voted against appellant on the questions submitted. It was error therefore for the learned referee to exclude the ballots of those who voted in favor of appellant and who appeared to be otherwise qualified, merely because they were not of full age or did not appear to him to have a sufficient understanding of the questions submitted. No reason was given by the learned referee for rejecting three ballots, nor have those who cast such ballots been identified. The ballots of Henry Wynne and Norma Mitchell appear to have been erroneously excluded because they were not of age. It does not appear whether the ballots of Barbara Stewart, Linda Stewart and Shirley Stewart were held to be invalid because of the fact that they were not of age, lacked comprehension of the nature of the dispute or were not members of the congregation on September 10, 1957. In my opinion the evidence established that they were such members on September 10, 1957, and that by reason of such membership they were entitled to vote pursuant to ecclesiastical law as recognized by the congregation. In addition, the evidence established that Edith Brown, Phyllis Blake and William Powell were all members of the congregation on that date and that they voted at the meeting in favor of appellant. No reason appears why their ballots should have been held to be invalid. There should have been added to the 31 unchallenged ballots in favor of appellant, the 7 challenged ballots found by the referee to be valid, the 3 unidentified ballots held to be invalid, for which no reason was given, and the 8 identified ballots hereinbefore referred to, which were held invalid. The result of the vote would then have been 44 against appellant and 49 in his favor, and, in accordance with the terms of the stipulation between the parties, the complaint should have been dismissed.

EXHIBIT F.

THE PEOPLE OF THE STATE OF NEW YORK

To Clerk of the Court of Appeals of the State of New York, Albany, New York,

GREETING:

WE COMMAND YOU, That all business and excuses being laid aside, you appear and attend before Honorable John M. Harlan, Judge of the United States Supreme Court at U. S. Supreme Court Building, Washington, D. C., on the to be submitted on or before April 14th, 1959. and at any adjourned date to testify and give evidence in a certain action now pending in the said Court, then and there to be tried between Arbie R. Miles, et ano etc., plaintiff and Anderson W. Wilson, etc., defendant on the part of the said Defendant and that you bring with you, and produce at the time and place aforesaid, a certain Produce the record on appeal, all briefs, all motion papers in support of the motion, and all papers in opposition to the motion. Orders on the motions, orders on the appeals, and the order granting motion to amend the remittitur. now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises. And for a failure to attend, you will be deemed guilty to a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit Fifty Dollars in addition thereto.

WITNESS, Honorable John M. Harlan one of the Justices of said Court, at U. S. Supreme Court Building, Washington, D. C., the 28th day of March, 1959.

SNITOW & SNITOW
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(Office and Post Office Address)
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New York 36, New York